

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re WESTERN STATES WHOLESALE NATURAL GAS ANTITRUST LITIGATION.)	2:03-cv-01431-RCJ-PAL
)	
)	MDL No. 1566
)	
)	ORDER

The Court recently granted four motions to dismiss for lack of jurisdiction for failure to oppose. *See* Local R. 7-2(d). Some parties have contacted the Court to express confusion over the opposition deadline. The Court issues the present order to clarify that it has never intended to extend response dates as to jurisdictional motions (as opposed to summary-judgment-type motions) beyond what the local rules provide. The Court notes that the Magistrate Judge previously issued one or more orders concerning extended deadlines applicable at least as to certain merits issues, except as otherwise ordered by the Court. Although movants had requested briefing under the local rules' timeframes, the Court did not explicitly order it. Because counsel may have reasonably interpreted the Magistrate Judge's extension to have relieved them from responding under the local rules, however, the Court will address the motions on the merits.

First, the Court notes that it would have granted three of the four motions on the merits under the law of the case. As movants noted, Judge Pro granted several motions to dismiss for lack of personal jurisdiction, and his dismissals were not appealed as to Defendants Reliant Energy, Inc., CMS Energy Corp., Cantera Gas Co, Duke Energy Carolinas, LLC, and Duke

1 Energy Trading & Marketing, LLC. (*See* Orders, ECF Nos. 1528–30). The Court will therefore
2 not revisit Motions 2248–50, although Plaintiffs may of course file motions to reconsider.

3 Second, however, AEP Energy Services, Inc. (“AEPES”) and American Electric Power
4 Co., Inc. (“AEP”) brought their motion after Judge Pro’s previous dismissal for lack of personal
5 jurisdiction, (*see* Order, ECF Nos. 1531), was reversed by the Court of Appeals except as to AEP
6 in the *Heartland* case because Plaintiffs in that case only appealed Judge Pro’s dismissal of
7 AEPES, (*see* Court of Appeals Op. 57–58, ECF No. 2113). The law of the case therefore
8 prevents the Court from granting AEP’s and AEPES’s motion, and the Court must reverse itself
9 in that regard. Movants argue that the Court of Appeals’ opinion did not resolve the issue, both
10 because that opinion reversed Judge Pro’s dismissal for lack of personal jurisdiction as to a
11 previous version of the Complaint, not the Third Amended Complaint (“TAC”) that is now
12 operative, and because AEP and AEPES must now be given an opportunity to present evidence
13 to rebut the claim of personal jurisdiction whereas it previously moved based on the
14 insufficiency of the allegations. The Court rejects the argument. Motions for lack of personal
15 jurisdiction under Rule 12(b)(2) permit parties to present evidence in support or opposition.
16 There is no indication movants did not have that opportunity before Judge Pro, and the Court of
17 Appeals thoroughly examined the jurisdictional issue in its opinion, ruling that Plaintiffs had
18 made the required *prima facie* showing. The TAC appears to contain the same relevant
19 allegations against movants as the Second Amended Complaint that was before Judge Pro when
20 he ruled. The Court finds no basis to revisit the issue.

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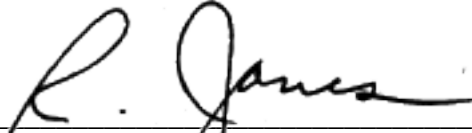
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CONCLUSION

IT IS HEREBY ORDERED that the Order (ECF No. 2270) is AMENDED IN PART,
and the Motion to Dismiss (ECF No. 2252) is DENIED.

IT IS SO ORDERED.

Dated this 26th day of January, 2016.



ROBERT C. JONES
United States District Judge